

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
WADV Radio, Inc.)	File Number EB-05-PA-046
)	
Licensee of Station WADV)	NAL/Acct. No. 200632400003
Lebanon, Pennsylvania)	
Facility ID # 20401)	FRN 0005-00-4502

FORFEITURE ORDER

Adopted: February 27, 2007

Released: March 1, 2007

By the Regional Director, Northeast Region, Enforcement Bureau:

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of four thousand dollars (\$4,000) to WADV Radio, Inc. (“WADV”), the licensee of AM Broadcast Radio station WADV in Lebanon, Pennsylvania, for willfully and repeatedly violating Section 73.1745(a) of the Commission’s Rules (“Rules”)¹ by operating its station at a power of more than 5 Watts during nighttime hours, in direct contravention of the terms of its station authorization.

2. On September 29, 2006, the Commission’s Philadelphia Field Office issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) in the amount of \$4000 to WADV for failure to reduce power or cease operations at local sunset time on numerous occasions during December 2005 and January 2006.² WADV does not dispute the findings in the NAL, but requests a cancellation or reduction of the forfeiture based on its inability to pay, its history of compliance with the Commission’s Rules, and the remedial efforts it has taken to prevent future violations.

3. We decline to reduce the proposed forfeiture based on an inability to pay. The Commission has determined that, in general, an individual’s or entity’s gross revenues are the best indicator of an ability to pay a forfeiture. We have reviewed the federal tax returns submitted by WADV and find that the forfeiture represents a percentage of gross income that falls within the range that has been found acceptable.³ We likewise decline to reduce the proposed forfeiture based on the fact that

¹ 47 C.F.R. § 73.1745(a).

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200632400003 (Enf. Bur., Philadelphia Office, released September 29, 2006).

³ See *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator’s gross revenues); *Local Long Distance, Inc.*, 15 FCC Rcd 24385, 24389 ¶ 11 (2000), *recon. denied*, 16 FCC Rcd 10023, 10025 ¶ 6 (2001) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator’s gross revenues); *Hoosier Broadcasting Corporation*, 14 FCC Rcd 3356 (CIB 1999), *recon. denied*, 15 FCC Rcd 8640, 8641 (Enf. Bur. 2002) (forfeiture not deemed

WADV has installed automated equipment that will prevent future over-powered operations. The Commission consistently has held that corrective action taken to come into compliance with the Rules is expected, and does not nullify or mitigate any prior forfeitures or violations.⁴ Finally, we also decline to reduce the proposed forfeiture based on WADV's history of compliance. WADV previously has received three Notices of Violation, two of which included violations for over-powered operation.⁵

4. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"),⁶ and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules,⁷ WADV Radio, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$4,000 for willfully and repeatedly violating Section 73.1745(a) of the Rules.

5. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.⁸ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director, Financial Operations, 1A625, 445 12th Street, S.W., Washington, D.C. 20554.⁹

excessive where it represented approximately 7.6 percent of the violator's gross income).

⁴ See *Seawest Yacht Brokers*, Forfeiture Order, 9 FCC Rcd 6099 (1994); see also *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21871-76 (2002).

⁵ See *WADV Radio, Inc.*, Notice of Violation, EB-01-PA-056 (rel. February 12, 2001)(failure, *inter alia*, to reduce power to authorized nighttime power); *WADV Radio, Inc.*, Notice of Violation, EB-01-PA-056 (rel. October 1, 2001); *WADV Radio, Inc.*, Notice of Violation, EB-01-PA-347 (rel. December 18, 2001)(operation at daytime power level during pre-sunrise hours).

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

⁸ 47 U.S.C. § 504(a).

⁹ See 47 C.F.R. § 1.1914.

6. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to WADV Radio, Inc. at its address of record and to counsel for WADV Radio, Inc. at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Russell Monie, Jr.
Regional Director, Northeast Region
Enforcement Bureau